***THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU**

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+WRIT PETITION NO: 22647 OF 2004

% 10/03/2005

#Between:

Thanda Venkanna, S/o Veeraiah, Polepally village, Thorrur Mandal, Warangal District.

..... PETITIONER

AND

$1.Mandal Educational Officer, Mandal Praja Parishad, Thorrur, Warangal District and two others

.....RESPONDENTS

! COUNSEL FOR THE PETITIONER: Mr. L. PRABHAKAR REDDY

^ COUNSEL FOR THE RESPONDENTS 1&2: GP FOR EDUCATION

^ COUNSEL FOR THE RESPONDENT No.3: Mr. K.L.N. RAGHAVENDRA REDDY

< Gist :

- Head Note:

? CITATIONS: NIL

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 22647 of 2004

Between:

Thanda Venkanna, S/o. Veeraiah, Polepally Village, Thorrur Mandal, Warangal District.

..... PETITIONER

AND

1. Mandal Educational Officer, Mandal Praja Parishad, Thorrur, Warangal District.
2 Primary School, Polepally Village, Thorrur Mandal, Warangal District. rep by its Head Master
3 Thurpati Chinna Nagaiah, S/o. not known to the petitioner,
R/o. Polepally Village Thorru Mandal, Warangal District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction or writ specially writ of mandamus declaring the proceedings No. B/60/MRC/2004 dated 17-11-2004 relating to removal of the petitioner as Chairman of School Education Committee, Primary School, Polepally and consequent Proceedings No. B/60/2004 dt. 17-11-2004 relating to appointment of 3rd respondent as Chairman of said school, issued by the 1st respondent as arbitrary, illegal, violation of principles of natural justice and contrary to provisions of A.P. School Education (Community Participation) Act, 1998 and rules made there under and set aside the same by allowing the petitioner to continue as chairman of the School Committee, Primary School, Polepally, Warangal District as per election held on 25-7-2003 and pass such other or further orders.

Counsel for the Petitioner: MR.L.PRABHAKAR REDDY

Counsel for the Respondent Nos.1&2: GP FOR EDUCATION

Counsel for the Respondent No.3: Mr K.L.N.Raghavendra Reddy

The Court made the following:

ORAL ORDER:

Memo dated 17.11.2004, removing the petitioner from the Chairmanship of School Education Committee, on the ground that none of his children is studying in the school, is impugned in this petition, by the petitioner.

2. The contention of the learned counsel for the petitioner is that since sub-rule (2) of Rule 10 of the A.P. School Education (Community Participation) Rules, 1998 (the Rules), specifically lays down that procedure prescribed in Rule 8 has to be followed in case of recall, and since the procedure for recall of a Member and/or Chairman prescribed in Rule 8 of the Rules is admittedly not followed, removal of the petitioner from the Chairmanship of the Parent Teacher Association of the school by the impugned memo is liable to be set aside. The contention of the learned Government Pleader is that no child of the petitioner admittedly is studying in the school and since section 5(4) of the A.P. School Education (Community

Participation) Act, 1998 (the Act) clearly lays down that a parent member shall cease to be a member when he has no child enrolled in the school, or recalled by the Parent-Teacher Association in the manner prescribed, and since as per Rule 10 of the Rules, a parent member of the School Committee/Panchayat Education Committee/ Mandal Education Committee/or of a District Education Committee shall cease to be a member automatically on suffering any of the disqualification enumerated in Section 5(4) of the Act, disqualification incurred by the petitioner, when no child of his is studying in the school, is automatic, and since this is not a case of recall of the petitioner question of following the procedure prescribed by the Rule 8 of the Rules does not arise and contends that since third respondent was elected after due notice to the members of the committee, petitioner is not entitled to any relief.

3. That no child of the petitioner was studying in the school by the date of the order impugned is an admitted fact. As per Section 5(4) of the Act a parent member shall cease to be a member when he has no child enrolled in the school. As per Rule 10 of the Rules, a parent member shall cease to be a member automatically when he suffers a disqualification enumerated under Section 5(4) of the Act. Since no child of the petitioner was studying in the school, his cessation was automatic. Since recall is different and distinct from incurring disqualification for a child not studying and since procedure prescribed by Rule 8 of the Rules has to be followed only in case of a recall, but not in case of automatic cessation, petitioner cannot be heard to say that non-compliance with Rule 8 of the Rules would invalidate the memo impugned.

4. In re the election of third respondent, by the notice dated 02.11.2004, the Mandal Education Officer informed that since no child of the petitioner is studying in the school, he incurred disqualification and consequently is removed from the Chairmanship of the Committee and in his place a parent, whose son is highest scorer in 4^{th} class, is appointed as a member of the committee as per the Memo No.13194/Prog.11.2/2003-1 dated 26.08.2003 of the Government and that a meeting of the committee would be held on 17.11.2004 for electing a Chairman of the Committee. The proceedings show that majority of the members present at the meeting elected the third respondent as Chairman of the Committee.

5. The contention of the learned counsel for the petitioner that since the Memo dated 26.08.2003 relates to the year 2003, but not to the year 2004, it does not apply to the year 2004 has no force because there is nothing in the said memo to show that its life is for only one year and since no document either cancelling or amending that memo is brought to my notice.

6. For the above reasons, petitioner is not entitled to any relief.

7. Hence, the petition is dismissed. No costs.

(C.Y.Somayajulu, J.)

Date: 10.03.2005

Cvrk

Note: L.R. copy to be marked.

//B.O.//

cvrk

..... REGISTRAR

One fair copy to the Hon'ble Mr. Justice C.Y.Somayajulu (for his Lordship's kind perusal)

To

1. The Mandal Educational Officer, Mandal Praja Parishad, Thorrur, Warangal District.
2. Primary School, Polepally Village, Thorrur Mandal, Warangal District. rep by its Head Master

3 Thurpati Chinna Nagaiah, S/o. not known to the petitioner, R/o. Polepally Village Thorru Mandal, Warangal District.

3. 2 copies to the G.P. for Education, High Court Buildings, Hyderabad (OUT).
4. 2 CD copies.
5. 1 CC to MR.RAGHAVENDER REDDY
6. The Under Secretary, Union of India, Ministry of Law, Justice & Company Affairs, N. Delhi.
7. The Secretary, A.P. Advocates' Association Library, High Court Buildings, Hyderabad.
8. 8. L.R. copies.